No. 409

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TO THE

SUPREME COURT OF THE UNITED STATES

E. C. Bobo,
Plaintiff-In-Error,

vs:

The Mayor and Councilmen of the Town of Savannah Beach, Tybee Island, Georgia,
Defendant-In-Error.

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

I.

The opinion of the Supreme Court of Georgia rendered in the above entitled case is reported at 216 Ga. 12, 114 S.E. 2d 374 (1960). A copy of said opinion is attached hereto as Appendix A.

II.

The present proceeding is an appeal from the foregoing decision of the Supreme Court of Georgia in which a claim that a statute of the State of Georgia violated the Constitution of the United States was denied and the validity of the statute upheld. The judgment sought to be reviewed was issued on April 4, 1960 and a motion for rehearing was denied on April 27, 1960. A Notice of Appeal was filed in the Supreme Court of Georgia on July 13, 1960.

III.

Jurisdiction of the case in this court is based on 28 U. S. C. Section 1257 (2).

IV.

The present case comes to the Supreme Court of the United States on appeal from the Supreme Court of Georgia and involves the constitutionality of certain laws relating to municipal elections in the city of Savannah Beach. The original petition in the Superior Court of Chatham County Georgia was filed on August 7, 1959 and sought to have these laws declared unconstitutional and inapplicable to the municipal election to be held in April of 1960. Subsequent to the filing of the suit, but prior to the presentation of the appeal to this Court, the election was held under the laws in question and those officers elected were duly sworn in and are presently carrying out the functions of their respective offices. The issue of mootness is thereby presented for consideration. Inasmuch, however, as the original petition sought not only an injunction with respect to the election in April 1960, but also a declaratory judgment that the particular election laws involved violated both the Georgia and Federal Constitutions, and in view of the fact that the unconstitutionality of the laws if present is continuing because of the recurrence every two years of elections held thereunder, and because of the public interest involved in a determination of the constitutionality of these statutes in the present case, a real and continuing controversy exists between the parties, and the following cases support the jurisdiction of this Court: *Southern Pacific Terminal Company vs. Interstate*

Commerce Commission, 219 U.S. 498, 55 L. Ed. 310 (1911); *United States vs. Trans Missouri Freight Association*, 166 U.S. 290, 41 L. Ed. 1007 (1897); *Lenard vs. Earle*, 279 U.S. 392, 73 L. Ed. 754 (1928); *Panama Refining Co. vs. Ryan*, 293 U.S. 388, 79 L. Ed. 446 (1935); *Boggess vs. Berry Corp.*, 233 F. 2d 289 (9th Cir. 1956); *Dyer vs. Securities and Exchange Commission*, 266 F. 2d 33 (8th Cir. 1959).

V.

The validity of the following statues of the State of Georgia form the issues in the present case:

"SECTION 8. Be it further enacted that the following persons shall be qualified and entitled to vote for Mayor and Councilmen of the Town of Tybee at elections held for that purpose: persons who shall be 21 years old, or upwards, shall own in his own name and right a lot or parcel of land in said Town, the deed to which has been recorded in the office of the Clerk of the Superior Court of Chatham County, Georgia, at least sixty days prior to said election, shall be a citizen of the United States, and shall have been a resident of the State of Georgia one year next preceding said election, and shall have been a bona fide resident and domiciled in the County of Chatham six months next preceding said election, and shall have paid all poll taxes that he or she may have had an opportunity of paying agreeably to law; and in addition thereto, persons who shall be 21 years old, or upwards, who shall be a citizen of the United States and shall have resided in this State one year next preceding the election and shall have been a bona fide resident and domiciled within the corporate limits of the Town of

Savannah Beach, Tybee Island, six months next preceding the election, and shall have paid all poll taxes that he or she may have had an opportunity of paying aggreably to law." 1939 Georgia Laws 1367-1368.

"SECTION 2. Be it further enacted that from and after the passage of this Act, in all elections for Mayor and Councilmen of said Town of Savannah Beach, Tybee Island, all of the said six (6) Councilmen shall be elected from among those persons qualified as electors to vote in said elections and who are at least twenty-one (21) years of age, as hereinbefore provided in this Act. Any one who is a qualified voter and is at least twenty-five (25) years of age, under the provisions of this Act may be elected Mayor of said Town. Should a vacancy occur in the office of Mayor, by death, resignation, or any other cause, such vacancy or vacancies shall be filled by a majority vote of said Council, provided, however, that in the filling of vacancies for either Mayor or Councilmen such vacancy shall be filled by a person qualified to vote and to hold such office under the provisions of this Act." 1947 Georgia Laws 594-595.

VI.

The following questions are presented by this appeal:

(1) Do the provisions of the municipal charter of Savannah Beach, Tybee Island, Georgia, granting to non-residents of said incorporated municipality owning land therein and who reside within Chatham County, Georgia, the right to vote in municipal elections of said city deprive the residents thereof of equal protection of the laws and of due process of the law guar-

anteed to them by the Fourteenth Amendment to the United States Constitution?

(2) Do the provisions of the municipal charter of Savannah Beach, Tybee Island, Georgia, granting to non-residents of said incorporated municipality who own land therein and who reside within Chatham County, Georgia the right to hold elected public offices as Councilmen of said municipality deprive the residents thereof of the equal protection of the laws and of due process of law guaranteed to them by the Fourteenth Amendment to the United States Constitution?

VII

This case was commenced in the Superior Court of Chatham County, Georgia on August 7, 1959 by E. C. Bobo against the Mayor and Councilmen of the Town of Savannah Beach, Tybee Island, Georgia. Bobo is a resident of the Town of Savannah Beach and his suit sought to have the previously quoted portions of the Charter of the Town of Savannah Beach declared unconstitutional and the municipal election to be held in April 1960 under these laws enjoined.

Plaintiff attacked these portions of the municipal charter on both state and federal constitutional grounds. The federal question raised was whether these laws arbitrarily created a special class of voters and office holders with respect to Savannah Beach and so discriminated against petitioner and other residents as to deprive them of the equal protection of the laws and due process of law guaranteed to them by the Fourteenth Amendment to the United States Constitution.

The position taken was that those portions of the Charter which permitted non-residents to vote in municipal elections and hold elective municipal offices, in light of the facts hereafter set forth, constituted unconstitutional class legislation and destroyed the right of democratic self government.

Petitioner is a qualified and registered voter of the Town of Savannah Beach and according to the existing voting records of said municipality there were qualified and registered as voters 408 residents of the municipality and 430 non-residents owning property within the municipality and residing in Chatham County, the county in which said municipality is located, at the time suit was filed.

The election for Mayor and Councilmen of Savannah Beach was scheduled to be held in April, 1960. Plaintiff's suit asked that this election be enjoined, and for a declaratory judgment that the previously quoted sections of the Municipal Charter were unconstitutional in violation of the Georgia constitution and the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

There are eight incorporated municipalities within Chatham County and in all of them with the exception of Savannah Beach only those residents of the county who are also residents of a particular municipality are qualified to vote in municipal elections within that municipality. With respect to Savannah Beach the Georgia legislature has permitted residents of all of the other six municipalities in Chatham County to vote in municipal elections of Savannah Beach provided that they own real property there and are other-

wise qualified. No reciprocal right of residents of Savannah Beach to vote in municipal elections of any other incorporated municipality within Chatham County exists, nor do the residents of any municipality within Chatham County have the right to vote in municipal elections of any city other than the one in which they reside, with the exception of Savannah Beach elections. The legislature has thereby created a special class of voters within Chatham County at the expense of self government by the residents of Savannah Beach. A similar situation exists with respect to the right of non residents to hold office as members of the board of councilmen of Savannah Beach. The claim that this legislation violated the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution was raised by plaintiff's original petition in the Superior Court of Chatham County, Georgia. No special factual situations exists within Savannah Beach to distinguish it from any other incorporated municipality within Chatham County so as to justify a difference in the manner of electing its municipal government, nor do any facts exist to distinguish those residents of Chatham County domiciled at Savannah Beach from those residents of Chatham County domiciled in other incorporated municipalities within the county. Thus those residents of Chatham County who reside at Savannah Beach are discriminated against with respect to all other residents of Chatham County and are subject to absentee landlordism in the management of their governmental affairs.

The petition alleged that said Acts constituted discriminatory class legislation without any difference in facts to justify a difference in treatment and so

arbitrarily diluted the political right of franchise of residents of Savannah Beach as to violate their civil rights guaranteed by the federal constitution. (R. 1-8)

The defendant filed a general demurrer to the petition on the grounds that the same failed to set forth any cause of action. (R.12)

On January 29, 1960 the Superior Court of Chatham County sustained the general demurrer and plaintiff's petition was dismissed. (R. 13)

The order dismissing plaintiff's petition contained no opinion with respect to the constitutional issues. In accordance with Georgia law plaintiff filed his bill of exceptions to the dismissing of his petition and in his bill of exceptions again raised the federal constitutional question. (R. 17-18)

On April 4, 1960 the Supreme Court of Georgia rendered its decision affirming the judgment of the lower court. The Georgia Supreme Court specifically ruled that the provisions of the Charter of Savannah Beach in question did not violate the Fourteenth Amendment of the United States Constitution. (R.23)

A motion for rehearing was filed reiterating the position of plaintiff that a violation of the Fourteenth Amendment existed. (R. 26-31). On April 27, 1960, without opinion, the Supreme Court of Georgia denied the motion for rehearing. (R. 36)

VIII.

Although the right to vote is a political rather than civil right and depends for its initial existence upon the state rather than federal government, it is now well-established by many decisions of this court that

the equal protection clause of the Fourteenth Amendment guarantees to each citizen of every state that this state created right shall be equally exercised by all citizens entitled under the law to vote and that any legislative enactment which arbitrarily deprives a particular individual or class of individuals of the equal right to exercise the franchise must be set aside. The right of free franchise is the cornerstone of any democratic form of government and legislative action which arbitrarily discriminates against a class of persons in the exercise of this democratic function necessarily attacks the concept of democracy itself. A claim of unconstitutionality on this grounds is of great and vital interest to the public at large, justifying consideration by the highest tribunal vested with authority to determine such issue. As Chief Justice Vanderbilt said in *State v. Benny*, 119 A 2d 155, 162: "The reliability of our elective processes stem from the fact that the voter will be directly affected by his own choice of candidate. The absence of any true and complete identity with the community and with all the rights, privileges, duties, and obligations that flow from the allegiance to it expected of a person domiciled therein would soon destroy the very pillars upon which our popular system of government is founded." Again, in *State v. Fay*, 21 A 2d 607: "The ballot in the hands of the qualified voter is the means by which he exercises his inalienable right to give consent as to how and by whom he chooses to be governed. The honesty, integrity and inviolability of that ballot must be maintained."

The issue thus presented to this court of whether a state legislature shall have the right to single out

the residents of a particular incorporated municipality within the state and deny them the right of self-government is of grave and far-reaching public importance calling for plenary consideration for its resolution. The far-reaching and undesirable consequences of allowing the legislature of a state to force residents of a particular municipality to submit to the control of non-residents who do not share their interests in and responsibilities to the community is obvious. While the present law requires the qualification of land ownership within the community the right of absentee voting, once established, could be progressively liberalized and the residents of a community oppressed in their economic rights as well as their political rights by a non-resident majority. In the present case the residents of Chatham County living outside of the Town of Savannah Beach vastly outnumber the residents of Savannah Beach and as the record shows the registered voters in Savannah Beach who are non-residents thereof outnumber the registered voters who are residents. While the present injury may be slight the potential danger calls for consideration on the merits by this court.

Respectfully Submitted

Erwin A. Friedman,
Attorney for Plaintiff-In-Error E. C. Bolin.

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Appendix A

20834. BOBO v. MAYOR&c. OF TOWN OF SAVANNAH BEACH, TYBEE ISLAND, GEORGIA

The General Assembly of this State has constitutional power to prescribe who shall exercise the corporate powers of a municipality and to provide the manner in which such officers may be chosen. Such matters are exclusively within the judgment and discretion of the General Assembly.

SUBMITTED MARCH 15, 1960 — DECIDED APRIL 4, 1960
REHEARING DENIED APRIL 27, 1960.

Injunction. Chatham Superior Court. Before Judge Harrison. January 29, 1960.

Aaron Kravitch, Findley, Shea, Friedman, Gannam, Head & Buchsbaum, for plaintiff in error.

Anton F. Solms, Jr., contra.

CANDLER, Justice. On August 7, 1959, the plaintiff, E. C. Bobo, filed a proceeding for injunctive and declaratory relief in the Superior Court of Chatham County against the defendants as the governing body of the Town of Savannah Beach, Tybee Island, Georgia (hereinafter referred to as Tybee); and the exception is to a judgment dismissing his petition on general demurrer. The petition questions the right of persons who reside in Chatham County, though outside of Tybee, but who own property therein, to vote in its elections for municipal officers thereof; and seeks an injunction to prevent such persons from being permitted to do so. Except as Tybee's charter relates to

the residence qualification of the mayor of such municipality and the voting age of electors, which were changed by an amendment to its charter in 1949 (Ga. L. 1949, p. 271), the petition in this case raises the same question respecting the validity of Tybee's charter which was raised in *Harris* v. *McMillan*, 186 *Ga.* 529 (198 S. E. 250), and which was, with Chief Justice Russell dissenting, decided adversely to the contention the plaintiff there made and to the attack which the petitioner makes in this case on Tybee's amended charter. However, it is earnestly argued by counsel for the plaintiff that the majority decision rendered in that case is unsound and for that reason should not be followed in this case. To this we do not agree. That case was decided on July 15, 1938, and it was there held (p. 535): "There is no requirement in our Constitution that there be uniformity in the charters of our municipalities. . . In so far as the powers and restrictions contained therein run counter to no constitutional provision, and no general law, they are valid. The legislature had the power, in granting this charter, to permit persons residing without the municipality but owning real estate therein but residing in the County of Chatham, to vote and hold office in such municipality, if otherwise qualified under the Constitution." As authority for such holding, the majority cited *State* v. *Saccaringen*, 12 *Ga.* 23 (1); *Beazley* v. *Lunceford*, 178 *Ga.* 683 (173 S. E. 852); and *Peacock* v. *Larsen*, 180 *Ga.* 444 (178 S. E. 922). And as further supporting authority for the decision rendered by the majority in that case, see *Churchill* v. *Walker*, 68 *Ga.* 681, and *Mayor &c. of Americus* v. *Perry*, 114 *Ga.* 871 (40 S. E. 1004, 57 L. R. A. 230). With only Chief Justice Rus-

sell not concurring, the decision in the *Harris* case, supra, was followed by this court in *Sharpley* v. *Fitzgerald*, 186 *Ga.* 526 (198 S. E. 255). There is also no merit in the contention that the provision in Tybee's charter which permits such non-resident persons to thus participate in the management of its municipal affairs offends the equal-protection clauses of the Federal Constitution (Code § 1-815) and the Constitution of this State (Code § 2-403), on the ground that it dilutes the voting power of those who actually reside within the municipality and is therefore discriminatory class legislation. "It is only in cases where laws are applied differently to different persons under the same or similar circumstances that the equal protection of the law is denied." *Baugh* v. *City of LaGrange*, 161 *Ga.* 80 (2a) (130 S. E. 69); *City of Valdosta* v. *Harris*, 156 *Ga.* 490 (4) (119 S. E. 625). In this connection, see also *Mayor &c. of Americus* v. *Perry*, supra, where it was in headnote 2 said: "There is nothing in the Constitution of this State which guarantees to the people living within the limits of a municipal corporation the absolute right of local self-government. How far people so situated may be allowed to participate in the choice of officers who are to administer the affairs of the local government is a matter exclusively within the judgment and discretion of the General Assembly." Since no attack here made on the validity of Tybee's charter is meritorious, it was not error, as contended, for the trial judge to dismiss the petition on general demurrer.

Judgment affirmed. All the Justices concur.

PROOF OF SERVICE

I, Erwin A. Friedman, an attorney in the firm of Findley, Shea, Friedman, Gannam, Head & Buchsbaum, attorneys of record for E. C. Bobo, plaintiff in error herein, depose and say that on the ..... day of ..... , 1960, I served a copy of the foregoing jurisdictional statement on A. F. Solms, Jr., counsel of record for said Mayor and Councilmen of the Town of Savannah Beach, Tybee Island, Georgia, defendant in error, located at 8th Floor, Realty Building, Savannah, Georgia.

ERWIN A. FRIEDMAN

Sworn to and subscribed before me
at Savannah, Georgia this ..... day
of ..... , 1960.

.....
Notary Public, Chatham County, Georgia